



U.S. Department of Justice

Immigration and Naturalization Service

B2

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 99 001 50557 Office: Vermont Service Center Date:

SEP 19 2000

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

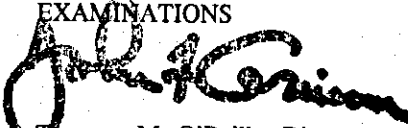
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

In this decision, the term "prior counsel" shall refer to [REDACTED] who represented the petitioner at the initial filing of the petition. The term "counsel" shall refer to the present attorney of record.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in business and the sciences. The director determined the petitioner had not established the national or international acclaim necessary to qualify for this classification.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2).

An alien, or any person on behalf of the alien, may file for classification under section 203(b)(1)(A) of the Act as an alien of extraordinary ability in science, the arts, education, business, or athletics. Neither an offer of employment nor a labor certification is required for this classification.

The specific requirements for supporting documents to establish that an alien has achieved sustained national or international

acclaim are set forth in the Service regulations at 8 C.F.R. 204.5(h)(3). The relevant criteria will be discussed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

Prior counsel describes the petitioner's activities:

[In the 1970s, the petitioner] served as head of the Passenger Fleet Division at [REDACTED] where, under his leadership, the fleet grew and flourished. At the same time, he was a Member of the Learned Council of the Odessa Institute of Merchant Marine Engineers and a Member of the Commission on Scientific Problems of Development of [REDACTED]

[REDACTED] In 1977, [the petitioner] was invited to Moscow to serve as Chairman of the All Union Association of the Sea Passenger Fleet. Once again, under his direction, the fleet was transformed into a large and profitable enterprise. . . .

[REDACTED] is currently Chairman of the Board and General Director of Russia's first non-state owned shipping company with limited liability, [REDACTED]. After the breakup of the Soviet Union, Russia was left without any passenger ships in the Black Sea Basin. [REDACTED] was formed at the initiative of [the petitioner] to fill this void. Today, it is successfully operating in the world cruise market.

The regulation at 8 C.F.R. 204.5(h)(3) presents ten criteria for establishing sustained national or international acclaim, and requires that an alien must meet at least three of those criteria unless the alien has received a major, internationally recognized award. Review of the evidence of record establishes that the petitioner has in fact met three of the necessary criteria, although the evidence falls short in other areas. The pertinent criteria follow.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Prior counsel states that the petitioner "has been awarded three orders and two medals of honor by the Supreme Soviet Presidium," and that the petitioner received the Honored Worker of the Merchant Marine Badge as well as two medals of honor from Russia's then-[REDACTED]. The initial submission contains no evidence to support these claims.

The record establishes that the petitioner won a gold medal from the Main Committee of the USSR Economic Achievements Exhibition in 1981, but the initial record does not show the significance of this award.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Prior counsel asserts that the petitioner is a member of the International Union of Economists ("IUE"). IUE documentation in the record includes a list of members. The petitioner's name does not appear on this list. The record, therefore, contains no support for the claim that the petitioner is a member of IUE.

Prior counsel asserts that the petitioner was also a member of several national commissions. While witnesses attest to the petitioner's membership on the commissions, there is no indication of the criteria for inclusion on these commissions.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The book [REDACTED] by [REDACTED] contains a brief passage describing how the petitioner was cleared of responsibility for major losses by the USSR's passenger fleet, but was nevertheless stripped of his post and expelled from the Communist party, owing partly to machinations by the [REDACTED]. The book is not about the petitioner; rather, the petitioner's case appears to have been used as an example of abuse of power by the [REDACTED].

The petitioner's name and photograph appear in two Italian-language magazine articles from Bollettino d'Informazione. The record does not include the translation which the above regulations require.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

Prior counsel asserts that the petitioner satisfies this criterion because the petitioner "has served on six commissions which have required him to judge the work of other scientists in the field of marine and transport economics." While witnesses attest that the petitioner has sat on these commissions, the record is devoid of evidence from the commissions themselves that would establish the nature or significance of the petitioner's participation on these commissions.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Several witness letters accompany the petition. [REDACTED], director of the S.I. [REDACTED] Institute of History of Natural Science and Technology at the Russian Academy of Sciences, deems the petitioner to be "a prominent [REDACTED] in the fields of [REDACTED]" whose reports "are widely known at conferences and seminars in Moscow, Kiev, Odessa and abroad." [REDACTED] asserts that the petitioner's "practical recommendations [are] extensively used in practice both at home and in foreign tourist shipping companies," and that the petitioner's "vigorous and fruitful activity . . . helped rebuild the operations of the Passenger Fleets of the Moscow, Volga and Volga-Don Steamship Companies for work under the new economic conditions in Russia."

[REDACTED] now of [REDACTED] Ireland, states:

As the manager of the cruise department of [REDACTED] first met [the petitioner] in 1967. . . .

[The petitioner] was at this time General Manager of the passenger department of Black Sea Shipping Co. in Odessa. This company owned and operated a fleet of 40 passenger ships with a total capacity of more than 10,000 passengers.

From 1967 we started a very successful cooperation which made [REDACTED] the number one cruise business in Germany. The cooperation between [the petitioner] and myself resulted also in a scientific investigation of cruise tourism and he and myself as co-author published the book [REDACTED] in 1984 which for many years was the basis of the rapidly expanding cruise business between the USSR and Germany.

[REDACTED] asserts that the petitioner "was internationally recognised as a top expert in [the] cruise business and won a high reputation in this field."

[REDACTED] Deputy of the State Duma (Russia's parliament), asserts:

[The petitioner] has contributed and continues to contribute today a noticeable, substantial contribution to developing the passenger fleet of our country, and to converting it into an advanced part of the merchant marine, competitive and active on the world cruise markets of America, Europe, Australia and elsewhere.

_____ adds that the petitioner's textbooks are widely used in Russia today.

_____ general secretary of the Russian Association of Independent Shipowners, affirms that the petitioner "made a great contribution to developing and improving the performance of the sea passenger fleet" of the Black Sea Steamship Company. _____ also confirms that one of the petitioner's textbooks "is still the principal aid for the training of specialists in the field of transport management."

The above testimony indicates that the petitioner is recognized for significant achievements in his field.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

Prior counsel asserts that the petitioner "has published a total of eighty-nine books and scholarly articles in distinguished journals and professional publications on the subject of marine transport." The petitioner submits a list of his claimed publications. Such a list, however, is not evidence of publication; rather, it is the petitioner's claim of such publication. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has, however, submitted evidence of several of his claimed publications, if not all 89. Several witnesses, highly placed in Russia's government and shipping industry, have attested to the influence of these publications.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The record demonstrates that the petitioner has held such key positions as acting general director of _____ an international joint venture between the USSR, Austria, and Germany, and president of _____ described as "the leading shipping organization of the former Soviet Union." Thus, the petitioner satisfies this criterion.

Prior counsel indicates that the petitioner's seats on the various government commissions also satisfies this criterion, but as noted above the record contains nothing to establish the significance of the petitioner's role on these commissions.

The director requested further information to establish that the petitioner has earned sustained national or international acclaim. In response, counsel reiterated prior counsel's arguments and submitted a new letter from [REDACTED] of [REDACTED] Corporation, Mineola, New York. [REDACTED] states that he has "had great success on all occasions" in which his company and the petitioner's company engaged in joint ventures.

The director denied the petition, stating that the record lacks primary evidence to support many crucial claims. The director observed that the petitioner's witnesses are business associates and others close to the petitioner, rather than independent sources.

Many of the director's observations are well-founded, and much of the evidence of record does not support the claims of counsel. These weaknesses, however, do not undermine the stronger pillars of the petitioner's claim to eligibility. While the initial witnesses have business or political ties to the petitioner, several of these witnesses are so highly placed within their fields that their testimony carries considerable weight. Indeed, the very fact that the petitioner is close to several ranking figures lends circumstantial support to the petitioner's claim of eligibility.

Counsel argues on appeal that the director misinterpreted the evidence, or regarded it out of its proper context. To support this assertion, several new letters accompany the appeal. [REDACTED] director of the Russian and Eurasian Program at the Center for Strategic and International Studies, Washington, D.C., establishes his own expertise regarding the former USSR and states:

I have examined the [petitioner's] list of publications and I am convinced that the titles are genuine, as I know many of the publications and am familiar with the publishing houses concerned. . . .

[T]he number of books and articles authored or co-authored by [the petitioner] is quite exceptional and well above that expected from a senior executive with an already demanding schedule. . . .

The Gold Medal presented to him in [REDACTED] by the [REDACTED] Main Committee for Economic Achievements represents a rare and outstanding award. . . .

I am impressed by the letters of recommendation written on behalf of [the petitioner] and by the caliber of the authors. I am personally acquainted with two of them, and I know that they would not put their signatures to meaningless, form letters.

[REDACTED] prize-winning journalist and US Bureau chief of Literaturnaya Gazeta, confirms many of [REDACTED] statements and asserts that the petitioner's "position as the [REDACTED] of [REDACTED] indicates that he is one of the industrial giants of the post Cold War Russia." [REDACTED] adds that, beyond the record materials he reviewed at the petitioner's request, he was already aware of the petitioner's reputation.

The petitioner also submits letters from the current and former directors of the Kennan Institute for Advanced Russian Studies at the Woodrow Wilson International Center for Scholars. Former director [REDACTED] asserts that the petitioner "was, without question, one of Russia's most powerful officials and scientists," and that the petitioner stands "at the top level of maritime activities in one of the world's chief maritime powers." Current director [REDACTED] concludes, on the basis of the record, that the petitioner "is the equivalent of a major corporate leader in the United States."

The director denied the petition based on concerns which were valid, given the information available to the director at the time. The petitioner has, however, submitted expert testimony on appeal from a variety of sources, which is sufficient to overcome the grounds for denial and establish the petitioner's eligibility for the visa classification sought.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has established that he seeks to continue working in the same field in the United States. The petitioner has established that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.